

**Comments from Kaity Van Amersfort, Affiliate Manager HPBA January 13, 2014**  
**TN#72476**

**COMMENT:** The Hearth, Patio & Barbecue Association raise the issue that the term and definition *Vented Hearth Heaters* found in various sections of the code of federal regulations, “CFR”, and included in the Commission’s proposed updates was vacated by the United States Court of Appeals. Therefore the term has no meaning and is unenforceable by the Department of Energy, “DOE”, under the CFR and the Energy Commission under the proposed regulations. To address the invalidation of the definition of Vented Hearth Heaters, HPBA offers suggested language changes to the proposed regulations. Overall HPBA has concerns that if the language remains there will be confusion among city and county building officials as they may try and enforce the installation of Vented Hearth Heaters with a certain efficiency standard based on language that has been vacated by a court and is currently subject to a new rule making by the DOE.

**RESPONSE:** Staff agrees with HPBA that in *Hearth, Patio & Barbecue Association v. Department of Energy, et al.*, 706 F.3d 499 (D.C. Cir. 2013) the court ordered that the definition of *Vented Hearth Heater* adopted by DOE be vacated, and remanded the matter to DOE to interpret the challenged provisions in accordance with the Court’s opinion. In the December 2013 Federal Register DOE stated due to the court ruling Vented Hearth Heaters are currently not a covered product. DOE is currently going through the process of assessing the classification of Vented Hearth Heaters which may result in the development of test procedures and energy conservation standards. Despite the activity regarding Vented Hearth Heaters, the CFR currently includes the invalidated definition and efficiency standards.

The purpose of the Commission’s rulemaking is to update the Commission’s federal regulations to conform to the most recent version of the CFR, which has been accomplished. The Commission has no discretion to adjust the language of the federal standards being incorporated into title 20, as they would no longer be the federal standards. This includes trying to modify the Vented Hearth Heater language to conform with the court ruling or in anticipation of language DOE might eventually use.

Staff agrees with HPBA that there is potential for confusion in the market place if local building inspectors attempt to enforce the currently listed AFUE for Vented Hearth Heaters which is not valid and in any event, without a test method could not be accurately determined.

Staff proposes to make available the following letter, directed to local building officials, to inform them that while Vented Hearth Heaters are in title 20 to reflect updates to the CFR, the definition and efficiency standards promulgated by DOE have been invalidated and are currently non-enforceable and have no test method. When the DOE finishes its process the Energy Commission can take action to correct and update title 20, as we are in the process of doing now.

Staff believes that keeping the language as proposed but providing an informational letter will allow the Commission to maintain consistency with the CFR while providing HPBA with a

mechanism to ensure their members have a simple tool to educate building officials who may erroneously enforce the Vented Hearth Heater regulations.

TO\*\*\*\*\*

Re: Information Bulletin for Vented Hearth Heaters

This notice is to inform you that efficiency standards associated with Vented Hearth Heaters are currently not enforceable.

On February 12, 2014 the California Energy Commission adopted appliance efficiency regulations which sought to update the federal portions of the states Title 20 appliance efficiency regulations to comport with recent changes to the CFR by the Department of Energy. As part of the update a definition of *Vented Hearth Heaters* (see section 1601 *Scope* and section 1602(e)) and minimum AFUE standards (see section 1605.1(e)) were added.

It is important to note that in *Hearth, Patio & Barbecue Association v. Department of Energy, et al.*, 706 F.3d 499 (D.C. Cir. 2013) the court ordered that the definition of *Vented Hearth Heater* adopted by DOE be vacated, and remanded the matter to DOE to interpret the challenged provisions in accordance with the Court's opinion.

Due to the court ruling vented hearth heaters are currently not a covered product by the DOE, have no associated efficiency standards or test methods and are not subject to federal or state enforcement. DOE is currently going through the process of assessing the classification of vented hearth heaters and may develop standards in the future. The Energy Commission will update title 20 to comport with the federal changes when the DOE has completed its process. This notice is good until the DOE has acted or February 12, 2015. If necessary, this notice will be reissued for another term. For additional information please contact \*\*\*\*\*

Sincerely

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**Comments from Dave Kelley Director, Application Engineering – Liebert Precision  
Cooling Emerson Network Power February 3, 2014 TN # 72510**

**COMMENT:** Section 1602 Definitions

Under Computer Room Air Conditioner the test method should be AHRI 1360

**RESPONSE:** The purpose of this rule making is to update the federal portion of the Commission's regulations to match the current version of the Code of Federal Regulations. The proposed language references the section of the Code of Federal Regulations, 10 CFR 431.96, which identifies the currently required test procedure. Computer Room Air Conditioners are federally regulated and the appropriate test procedures can be found in 10 CFR 431.96, *Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps*. Because there are a number of different test methods depending on category and cooling capacity of the air conditioner, staff has chosen to cite the section of the Code of Federal Regulations identifying the test method rather than copying the entire chart into the definition section of 1602. While AHRI 1360 may be a new test method, it is not currently identified in 10 CFR 431.96 therefore the Commission cannot incorporate or require the use of AHRI 1360.

**COMMENT:** Section 1604 Table C-1

Under Computer Room Air Conditioners, the test method for air-cooled, glycol-cooled, water-cooled should be AHRI 1360.

**RESPONSE:** The purpose of this rule making is to update the federal portion of the Commission's regulations to match the current version of the Code of Federal Regulations. The proposed language references two sections of the Code of Federal Regulations, 10 CFR 431.95 and 431.96, which identify the currently required test procedure. Computer Room Air Conditioners are federally regulated and the appropriate test procedures can be found in 10 CFR 431.95 *Materials incorporated by reference* and 431.96, *Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps*. Because there are a number of different test methods depending on category and cooling capacity of the air conditioner, staff has chosen to cite the section of the Code of Federal Regulations identifying the test method rather than copying the entire chart into the table C-1 in section 1604. While AHRI 1360 may be a new test method, it is not currently identified in 10 CFR 431.95 or 431.96, therefore the Commission cannot incorporate or require the use of AHRI 1360.

**COMMENT:** Section 1605.1 Table C-6

A column needs to be added for horizontal-flow units with their own SCOP values.

**RESPONSE:** The purpose of this rule making is to update the federal portion of the Commission's regulations to match the current version of the Code of Federal Regulations. Section 1605.1 Table C-6 copies Table 7 10 C.F.R § 431.97 Table 7, titled, *Minimum Efficiency Standards for Computer Room Air Conditioners*. The current version of Table 7 does not contain a column for horizontal-flow units. Because Computer Room Air Conditioners are

federally regulated, the Commission can only incorporate existing Code of Federal Regulation standards. Therefore the Commission cannot make the requested change.

**COMMENT:** Section 1606 Table X Data Submittal Requirements

Under Computer Room Air Conditioners lines need to be added for Horizontal-flow Unit Power Input (watts) and Horizontal-flow Unit SCOP

**RESPONSE:** The purpose of this rule making is to update the federal portion of the Commission's regulations to match the current version of the Code of Federal Regulations. Section 1606 Table X matches the data required to be submitted to the Department of Energy under 10 CFR 431.97, Table 7,<sup>1</sup> The current version of 10 CFR 431.97, Table 7, does not contain a requirement for horizontal-flow Unit Power Input and Horizontal-flow Unit SCOP. Because Computer Room Air Conditioners are federally regulated, the Commission can only incorporate existing Code of Federal Regulation standards. Therefore the Commission cannot make the requested change.

**Comments from Jon Dickenson, Corporate Affairs Hewlett-Packard February 3, 2014 TN # 72507**

**COMMENT:** We ask that you clarify that on page 223 (f) Filing by Third Parties 1(A) and (B) are "one-time" submissions. Are we correct to assume this language does not require annual submissions but only "one-time" submissions? Typically when we complete forms of this type, such as for the US Department of Energy, we submit a supplier authorization form one-time for each supplier. This authorization applies to all products and or models the suppliers register with the government agency.

**RESPONSE:** In an effort to reduce administrative filing burdens and utilize a more efficient process the annual requirement is being removed so that a third party only needs to file once under section 1606(f)(1)(A) and a manufacturer under section 1606(f)(1)(B). Absent some type of action under 1606(f)(3) or (4), a new filing would only be necessary if a new third party is to begin submitting data on behalf of a manufacturer.

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<sup>1</sup> <http://www.ecfr.gov/cgi-bin/text-idx?SID=69265a605f16f720a7df378dbfd09515&node=10:3.0.1.4.19.6.57.5&rgn=div8>

**COMMENT:** We ask that you clarify that on page 223 (f) Filing by Third Parties (1)(B): before or with the first submittal made by the third party, the manufacturer submits to the third party and Executive Director. Before the language stated, “Delegation of Authority is sent to CM who then submits Delegation of Authority and 3<sup>rd</sup> party certifier application to CEC”. Please clarify whether this declaration is required “one-time” and whether this provision requires a dual submission of the form to the Executive Director AND the 3<sup>rd</sup> party. HP would recommend that the language require the form be filled “one-time” to the Energy Commission only. This would be consistent with procedural standards employed by the US Department of Energy.

**RESPONSE:** Staff is not clear where the language identified in the comment, *Delegation of Authority is sent to CM who then submits Delegation of Authority and 3<sup>rd</sup> party certifier application to CEC* comes from since it is not part of section 1606(f)(1)(B). Regardless, the propose language, *before or with the first submittal made by the third party*, confirms that absent some type of action under 1606(f)(3) or (4), a declaration would only be necessary in conjunction with the first submittal from a new third party and not annually.

With the removal of section 1606(f)(1)(B)(3) the requirement to provide notice by a manufacturer to the Commission that a third party is authorized to submit information to the Commission on behalf of the manufacturer, was folded into section 1606(f)(1)(B). Since this section already required the manufacturer to submit certain information to the third party the new language simply causes the third party and Executive Director to receive the same information in one step.

**COMMENT:** On page 220, there is an option to file electronically but that Executive Director has to approve the use of a unique digital identifier for this purpose. Do you have an example of an acceptable digital identifier?

**RESPONSE:** The language discussing electronic submissions is original language and is not subject to any changes under this current rulemaking. The term “digital identifier” was a place holder to accommodate changing technological capabilities and practices at the Commission. As electronic submissions become common place in industry and government, the Commission is accepting the various methods of “signing” electronic submissions. Generally a signature may be shown on the electronic copy by inserting a scanned signature graphic, or by “Original Signed By”, “/S/”, or similar notation. Because the methods of electronic signing are dynamic and the Commission is in the process of implementing an efilng system, it is recommended to contact staff before filing to confirm the options compatible with the Commission’s technology system.